

Kevin I. Shenkman (SBN 223315)
Mary R. Hughes (SBN 222622)
Andrea A. Alarcon (SBN 319536)
SHENKMAN & HUGHES PC
28905 Wight Road
Malibu, California 90265
Telephone: (310) 457-0970

R. Rex Parris (SBN 96567)
Ellery Gordon (SBN 316655)
PARRIS LAW FIRM
43364 10th Street West
Lancaster, California 93534
Telephone: (661) 949-2595
Facsimile: (661) 949-7524

Milton Grimes (SBN 59437)
LAW OFFICES OF MILTON C. GRIMES
3774 W 54th St
Los Angeles, California 90043
Telephone: (323) 295-3023

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

SOUTHWEST VOTER
REGISTRATION EDUCATION
PROJECT and LUIS ORTIZ-FRANCO

Plaintiffs,

v.

CITY OF ORANGE, CALIFORNIA;
and DOES 1-100, inclusive,

Defendants.

Case No.: 30-2019-01051924-CU-CR-CJC
Judge Melissa R. McCormick
**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA VOTING RIGHTS ACT OF
2001**

1 **COMES NOW** Plaintiffs Southwest Voter Registration Education Project (hereinafter
2 “SVREP”) and Luis Ortiz-Franco (collectively “Plaintiffs”), and allege as follows:

3 **NATURE OF THE ACTION**

4 1. This action is brought by Plaintiffs for injunctive and declaratory relief against
5 the City of Orange, California, for its violation of the California Voting Rights Act of 2001
6 (hereinafter the "CVRA"), Cal. Elec. Code §§ 14025, et seq. The imposition of at-large
7 elections by the City of Orange has resulted in vote dilution for the Latino residents and has
8 denied them effective political participation in elections to the five-member Orange City
9 Council. The City of Orange's at-large method of election for electing members to its City
10 Council prevents Latino residents from electing candidates of their choice or influencing the
11 outcome of Orange's City Council elections.

12 2. The effects of the City of Orange's at-large method of election are apparent and
13 compelling. Despite a Latino population of 38.1% in the City of Orange according to the
14 2010 Census (and likely higher today), Latinos preferred by the Latino electorate have
15 consistently lost their bids for election to Orange's City Council. Rather, in Orange's recent
16 elections – including the most recent election in 2018 – Latino candidates, preferred by the
17 Latino electorate, were all defeated by the bloc voting of the non-Latino electorate. All of
18 this reveals a lack of access for Latinos to the political process.

19 3. Orange's at-large method of election violates the CVRA. Plaintiffs bring this
20 action to enjoin the City of Orange's continued abridgment of Latino voting rights. Plaintiffs
21 seek a declaration from this Court that the City of Orange's at-large elections, for all or any
22 portion of its city council, violates the CVRA. Plaintiffs seek injunctive relief enjoining the
23 City of Orange from further imposing or applying an at-large method of election. Further,
24 Plaintiffs seek injunctive relief requiring the City of Orange to implement district-based
25 elections or other alternative relief tailored to remedy Orange's violation of the CVRA.
26 Moreover, Plaintiff and, more generally, the voters residing in Orange are entitled to the
27 prompt implementation of district-based elections employing districts tailored to remedy the
28 years of dilution of the Latino vote in Orange.

4. Plaintiffs attempted to avoid the need for litigation by engaging in a dialogue with the City of Orange. Specifically, Plaintiffs, through their counsel, brought the City of Orange's violation of the CVRA to the attention of the City of Orange through correspondence in April 2017. Despite that correspondence, sent via certified mail pursuant to section 10010 of the Elections Code, the Orange City Council has not taken the actions necessary to end its violation of the CVRA, content to continue violating the CVRA and their constituents' voting rights.

PARTIES

5. SVREP, founded in 1974, is the largest and oldest non-partisan Latino voter participation organization in the United States. SVREP was founded to ensure the voting rights of Latinos in the Southwest United States, and continues that mission today, now operating in various states, including California. Over the course of the last few decades, SVREP has been at the forefront of major social and political gains for Latinos in the U.S. and throughout Latin America. While its primary mission is voter registration and education, SVREP is also involved in ensuring fair elections, community organizing, and education, accountability and training of community leaders and elected officials.

6. Currently, SVREP has a network of tens of thousands of Latino leaders and voters who further SVREP's mission through activities such as voter registration projects, nonpartisan get-out-the-vote drives, and advocacy at the local, state, and national levels to raise awareness and support voting rights issues. Through its efforts in and around Orange, SVREP has developed a close relationship with Latino registered voters residing in Orange – a relationship particularly focused on protecting the voting rights of the Latino residents of Orange. The Latino leaders and voters who further SVREP's mission, including those who are registered to vote in Orange, influence the priorities and activities of SVREP. SVREP, as an organization, is essentially defined by those Latino leaders and voters – they work with SVREP's leadership to achieve their collective mission; they finance much of SVREP's activities, including in Orange; and, as a practical matter, they select SVREP's leadership.

SVREP leadership constantly obtains feedback from its network of Latino leaders and voters, and adjusts SVREP's activities according to the desires of those individuals.

7. SVREP has been, and continues to be, at the forefront of the struggle for equal voting rights for Latinos in California and throughout the United States. SVREP's work in that respect has included strong advocacy in the courts of California and other states to protect voting rights, whether it be litigating against poll taxes disguised as voter identification laws, litigating against gerrymandered legislative districts that dilute the Latino vote, or litigating for fair district-based elections to replace the at-large election systems that are well known (indeed, intended) to dilute the minority vote. SVREP will bring that same resolve to litigating this case to require Defendant to comply with the CVRA, a law enacted almost sixteen (16) years ago but Defendant has still not seen fit to comply with. In recent years, SVREP's network of Latino leaders and voters in California, including Orange, have urged SVREP to focus on the structures of municipal elections in California, in addition to all of SVREP's work in voter registration. After all, increasing Latino voter registration from 15% to 20%, for example, in a particular jurisdiction, may have little or no effect on the outcome of at-large elections in the face of racially polarized voting, and in turn the futility that develops ultimately frustrates SVREP's efforts to improve registration, turnout, candidate recruitment and civic engagement. By changing the electoral structures employed by municipalities in California, SVREP can change that cycle of futility. In response to the urging of its Latino leaders and voters, SVREP has taken action to bring fair and legal elections to several jurisdictions, including Orange.

8. With the assistance and at the request of some of its Latino voters in Orange, SVREP has engaged in voter registration projects within the City of Orange. However, SVREP has found that a significant obstacle to those projects in Orange has been a sense of futility among Latinos in Orange. Specifically, due to their lack of representation on the Orange City Council, and their inability to obtain such representation under the current at-large election system, Latinos in Orange have less reason to vote or register to vote. Therefore, the City of Orange's at-large method of electing its City Council impairs SVREP's

1 efforts to register Latino eligible voters, as well as SVREP's get-out-the-vote and advocacy
2 projects in Orange.

3 9. By de-incentivizing the registration of Latinos eligible to vote, Orange's at-
4 large election system obstructs SVREP's efforts to register Latino voters and cause Latino
5 registered voters to actually vote. The disparity between the Latino proportion of the
6 population in Orange - approximately 38.1% as of 2010, and likely higher today - and the
7 Latino proportion of the registered voters in Orange is a clear indication of the harm caused
8 by Orange's unlawful at-large election system.

9 10. In crafting its Latino voter registration and participation efforts in California
10 and elsewhere, SVREP seeks to capture Latino eligible voters' interest by pointing to current
11 issues that can be affected by a strong Latino electorate. Sometimes statewide issues are so
12 inflammatory that they can be effective motivators; for example, Proposition 187 in 1994 led
13 to a significant increase in Latino voter registration. Local issues are often even more
14 effective, as they tend to have a greater impact on residents' lives, and eligible voters
15 understand that their votes have a greater impact on local issues because of the smaller
16 electorate in municipal elections. However, when an at-large election system has consistently
17 prevented Latinos from electing candidates of their choice or influencing the outcome of
18 municipal elections, as in Orange, any appeal to Latino eligible voters about an ability to
19 impact local government justifiably falls on deaf ears. Unable to convince some Latino
20 eligible voters in Orange that their votes matter in municipal elections, because of the
21 unlawful at-large election system, SVREP is forced to spend far greater resources (both time
22 and money) in Orange in order to achieve even close to the same results in its voter
23 registration and participation efforts.

24 11. The Latino residents of Orange whose voting rights are immediately harmed by
25 the City of Orange's adherence to an unlawful at-large system of electing its city council are
26 hindered from protecting their own interests. Many of the Latino citizens of Orange do not
27 recognize that their voting rights are being violated by the City of Orange's adherence to an
28 unlawful at-large system of electing its city council, and still others fear reprisal by the City

1 of Orange if they were to seek redress for the City of Orange imposing its unlawful election
2 system. In other cases brought under the CVRA, individual plaintiffs have faced reprisal
3 from defendants and their allies. For example, the City of Palmdale attempted to pressure a
4 non-profit organization with significant financial connections to the city government to
5 terminate the employment of a plaintiff's mother-in-law in order to convince that plaintiff to
6 back out of that case; the City of Highland caused the plaintiff's residence address to be
7 published in the local newspaper so that its allies could harass her at her home and perhaps
8 convince her to back out of that case; the City of Santa Monica eliminated funding for the
9 plaintiff's youth and family center. This fear of retaliation is perhaps even more acute in
10 Orange, where a resident, after speaking negatively about Latina city council candidate Betty
11 Valencia at a city council meeting, pulled a knife and had to be addressed by the police
12 officers who were present. By having an organizational plaintiff, like SVREP, involved in
13 this case, Defendant's motivation to take inappropriate action against an individual plaintiff is
14 reduced.

15 12. In spite of that fear of retaliation, Plaintiff Luis Ortiz-Franco is determined to
16 vindicate his voting rights and those of his neighbors in Orange. Mr. Ortiz-Franco is a Latino
17 registered voter, residing in the City of Orange.

18 13. At all times herein mentioned, Defendant City of Orange, California
19 (hereinafter "Orange") is and has been a political subdivision subject to the provisions of the
20 CVRA.

21 14. Plaintiff is unaware of the true names and capacities, whether individual,
22 corporate, associate, or otherwise, of defendants sued herein as Does 1 through 100,
23 inclusive, and therefore, sues said defendants by such fictitious names and will ask leave of
24 court to amend this complaint to show their true names and capacities when the same have
25 been ascertained. Plaintiff is informed and believes and thereon alleges that defendants Does
26 1 through 100, inclusive, are responsible on the facts and theories herein alleged.

15. Does 1 through 100, inclusive, are Defendants that have caused Orange to violate the CVRA, failed to prevent Orange's violation of the CVRA, or are otherwise responsible for the acts and omissions alleged herein.

16. Plaintiffs are informed and believe and thereon allege that Defendants and each of them are in some manner legally responsible for the acts and omissions alleged herein, and actually and proximately caused and contributed to the various injuries and damages referred to herein.

17. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned each of the Defendants were the agent, partner, predecessor in interest, successor in interest, and/or employee of one or more of the other Defendants, and were at all times herein mentioned acting with the course and scope of such agency and/or employment.

JURIDICTION AND VENUE

18. All parties hereto are within the unlimited jurisdiction of this Court. The unlawful acts complained of occurred in Ventura County. Venue in this Court is proper.

FACTS

19. The City of Orange contains approximately 136,416 persons, of which approximately 38.1% are Hispanic or Latino, both based upon the 2010 United States Census.

20. The City of Orange is governed by a city council. The Orange City Council serves as the governmental body responsible for the operations of the City of Orange. The City Council is comprised of five members, including one member designated as “mayor.”

21. The Orange City Council members are elected pursuant to an “at-large method of election,” as that term is defined by Section 14026 of the Election Code. In all past elections, all of the eligible voters of the entire City of Orange have elected all of the members of the City Council.

22. Vacancies to the City Council are elected on a staggered basis; as a result, every two years the city electorate elects three City Council members – including the member separately elected as “mayor” every two years.

1 23. Elections conducted within the City of Orange are characterized by racially
2 polarized voting. Racially polarized voting occurs when members of a protected class as
3 defined by the CVRA, Cal. Elec. Coed § 14025(d), vote for candidates and electoral choices
4 that are different from the rest of the electorate. Racially polarized voting exists within the
5 City of Orange because there is a difference between the choice of candidates or other
6 electoral choices that are preferred by Latino voters, and the choice of candidates or other
7 electoral choices that are preferred by voters in the rest of the electorate, with the result being
8 that Latino-preferred candidates usually lose.

9 24. Racially polarized voting is legally significant in Orange's City Council
10 elections because it dilutes the opportunity of Latino voters to elect candidates of their choice
11 or influence the outcome of those elections.

12 25. Patterns of racially polarized voting have the effect of impeding opportunities
13 for Latino voters to elect candidates of their choice to the at-large city council positions in the
14 City of Orange or influence the outcome of those elections, where the non-Latino electorate
15 dominates elections. For several years, Latino voters have been harmed by racially polarized
16 voting.

17 26. The at-large method of election and repeated racially polarized voting has
18 caused Latino vote dilution within the City of Orange. Where Latinos and the rest of the
19 electorate express different preferences on candidates and other electoral choices, non-
20 Latinos by virtue of their overall numerical majority among voters, defeat the preferences of
21 Latino voters.

22 27. The obstacles posed by at-large elections in the City of Orange, together with
23 racially polarized voting, impair the ability of people of certain races, color or language
24 minority groups, such as Latino voters, to elect candidates of their choice or to influence the
25 outcome of elections conducted in the City of Orange.

26 28. An alternative method of election, such as district-based elections, exists that
27 will provide an opportunity for the members of the protected classes as defined by the CVRA
28

1 to elect candidates of their choice or to influence the outcome of the Orange City Council
2 elections.

3 **FIRST CAUSE OF ACTION**
4 **(Violation of California Voting Rights Act of 2001)**
5 **(Against All Defendants)**

6 29. Plaintiff incorporates by this reference paragraphs 1 through 28 as though fully
7 set forth herein.

8 30. Defendant City of Orange is a political subdivision within the State of
9 California. Defendant is a general law city.

10 31. Defendant City of Orange has employed an at-large method of election, where
11 voters of its entire jurisdiction elect all five members to its City Council.

12 32. Racially polarized voting has occurred, and continues to occur, in elections for
13 members of the City Council for the City of Orange and in elections incorporating other
14 electoral choices by voters of the City of Orange, California. Absent remedial measures
15 ordered by this Court, racially polarized voting will continue to plague elections held in
16 Orange. As a result, the City of Orange's at-large method of election is imposed in a manner
17 that impairs the ability of protected classes as defined by the CVRA to elect candidates of
18 their choice or influence the outcome of elections.

19 33. An alternative method of election, such as district-based elections, exists that
20 will provide an opportunity for the members of a protected class as defined by the CVRA to
21 elect candidates of their choice or to influence the outcome of the Orange City Council
22 elections.

23 34. An actual controversy has arisen and now exists between the parties relating to
24 the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a
25 declaration of rights.

26 35. Defendants' wrongful conduct has caused and, unless enjoined by this Court,
27 will continue to cause, immediate and irreparable injury to Plaintiff, and all residents of the
28 City of Orange.

